



Billing Code: 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2012-0348; FRL-9839-8]

Approval and Promulgation of State Implementation Plans; State of North Dakota; Interstate Transport of Pollution for the 2006 PM_{2.5} NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving portions of a State Implementation Plan (SIP) submission from the State of North Dakota which demonstrates that its SIP meets certain interstate transport requirements of the Clean Air Act (“Act” or “CAA”) for the 2006 fine particulate matter (“PM_{2.5}”) National Ambient Air Quality Standards (“NAAQS”). Specifically, EPA is approving the portion of the North Dakota SIP submission that addresses the CAA requirement prohibiting emissions from North Dakota sources from significantly contributing to nonattainment of the 2006 PM_{2.5} NAAQS in any other state or interfering with maintenance of the 2006 PM_{2.5} NAAQS by any other state.

EFFECTIVE DATE: This final rule is effective [FEDERAL REGISTER: insert date 30 days after publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2012-0348. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be

publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129, (303) 312-7104, clark.adam@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act.
- (ii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- (iii) The initials NAAQS mean or refer to National Ambient Air Quality Standards.
- (iv) The initials SIP mean or refer to State Implementation Plan.
- (v) The initials NDDH mean or refer to the North Dakota Department of Health.
- (vi) The words North Dakota and State mean the State of North Dakota.

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I. Background

On October 17, 2006 EPA promulgated a new NAAQS for PM_{2.5}, revising the level of the 24-hour PM_{2.5} standard to 35 µg/m³ and retaining the level of the annual PM_{2.5} standard at 15 µg/m³. (71 FR 61144). By statute, SIPs meeting the “infrastructure” requirements of CAA sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. Among the infrastructure requirements of section 110(a)(2) are the “interstate transport” requirements of section 110(a)(2)(D).

CAA section 110(a)(2)(D)(i) identifies four distinct elements related to the evaluation of impacts of interstate transport of air pollutants. In this action for the state of North Dakota, EPA is addressing the first two elements of section 110(a)(2)(D)(i) with respect to the 2006 PM_{2.5} NAAQS.¹ The first element of section 110(a)(2)(D)(i) requires that each SIP for a new or revised NAAQS contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will “contribute significantly to nonattainment” of the NAAQS in another state. The second element of CAA section 110(a)(2)(D)(i) requires that each SIP for a new or revised NAAQS contain adequate provisions to prohibit any source or other type of emissions activity in the state from emitting pollutants that will “interfere with maintenance” of the applicable NAAQS in any other state.

On August 12, 2010, the North Dakota Department of Health (NDDH) provided a

¹ This action does not address the two elements of the transport SIP provision (in CAA section 110(a)(2)(D)(i)(II)) regarding interference with measures required to prevent significant deterioration of air quality or to protect visibility in another state. We will act on these elements in a separate rulemaking.

submission to EPA certifying that North Dakota's SIP is adequate to implement the 2006 PM_{2.5} NAAQS for all the "infrastructure" requirements of CAA section 110(a)(2). This submission included a transport analysis to support the conclusion that North Dakota's SIP meets the requirements of CAA section 110(a)(2)(D)(i)(I) for this NAAQS.²

On May 13, 2013 (78 FR 27888), EPA proposed to approve the 110(a)(2)(D)(i)(I) portion of NDDH's August 12, 2010 submission. As described in detail in that notice, we based our proposed approval on modeling performed for the Cross State Air Pollution Rule (August 8, 2011, 76 FR 48208). Using the results of that modeling, we determined that emissions from North Dakota do not significantly contribute to nonattainment or interfere with maintenance of the 2006 PM_{2.5} NAAQS in any other state. As a result, we proposed to conclude that North Dakota's existing SIP is adequate to address the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 PM_{2.5} NAAQS, and that additional control measures in North Dakota are not necessary for this purpose.

II. Response to Comments

EPA did not receive any comments on the May 13, 2013 proposal.

III. Final Action

EPA is approving the 110(a)(2)(D)(i)(I) portion of North Dakota's August 12, 2010 SIP submission. For reasons described in the proposal for this action, we conclude that the existing SIP is adequate to address the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 PM_{2.5} NAAQS.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that

² NDDH's submission, dated August 12, 2010, is included in the docket for this action.

complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements

would be inconsistent with the Clean Air Act; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the

time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile Organic Compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Date: July 12, 2013.

Shaun L. McGrath,
Regional Administrator,
Region 8.

40 CFR part 52 is amended to read as follows:

PART 52 -- APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart JJ - North Dakota

2. Section 52.1833 is amended by designating existing paragraph as (a) and adding paragraph (b) to read as follows:

§52.1833 Section 110(a)(2) infrastructure requirements.

* * * * *

(b) On August 12, 2010, Tom Bachman, Senior Environmental Engineer, North Dakota

Department of Health, submitted a completeness criteria checklist which provides the State of North Dakota's SIP provisions which meet the requirements of CAA Section 110(a)(1) and (2). The following element is approved for the 2006 PM_{2.5} NAAQS: (D)(i)(I).

[FR Doc. 2013-18038 Filed 07/26/2013 at 8:45 am; Publication Date: 07/29/2013]